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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FILED

JAN 27 2011

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 09-29162-D-11
SK FOODS, L.P.,)
Debtor.) Docket Control No. SH-91
) Date: January 24, 2011
) Time: 9:30 a.m.
) Dept: D
)
)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On December 22, 2010, the chapter 11 trustee in this case, Bradley D. Sharp (the "trustee"), filed a Renewed Motion for Certification of Class Proofs of Claim (the "Motion"). For the reasons set forth below, the court will grant the Motion.

I. THE POSITIONS OF THE PARTIES

The trustee seeks an order as follows: (1) certifying as class proofs of claim for purposes of a settlement of such claims the proofs of claim filed in this case by Bruce Foods Corp., Cliffstar Corp., Diversified Foods and Seasonings, Inc., and Four In One Co. Inc. (the "Class Representatives"); (2) defining the claimants who will be entitled to participate as members of the class; (3) certifying the Class Representatives as the representatives of the class for purposes of the allowance and treatment of their claims in this case; (4) appointing the law firms of Quinn Emanuel Urquhart & Sullivan LLP and Hausfeld LLP

1 as counsel to the class ("Class Counsel"); and (5) establishing
2 further procedures relating to the class. At the hearing,
3 counsel for the unsecured creditors' committee stated that the
4 committee strongly supports the Motion.

5 Scott Salyer ("Salyer"), president of SK PM Corp., general
6 partner of debtor SK Foods, L.P., together with various entities
7 related to Salyer (collectively, the "Salyer entities") oppose
8 the Motion, as further described below.

9 II. ANALYSIS

10 The Motion is brought pursuant to Fed. R. Civ. P. 23 ("Rule
11 23"), incorporated herein by Fed. R. Bankr. P. 7023. The trustee
12 must satisfy the four requirements set forth in Rule 23(a) and at
13 least one of the three requirements of Rule 23(b).

14 First, the authorities cited and reasoning presented by the
15 trustee on the issues of numerosity, commonality, typicality, and
16 adequacy are persuasive, and the Salyer entities have made no
17 argument as to any of these issues. Thus, the court adopts the
18 trustee's analysis and finds that the requirements of Rule 23(a)
19 are met.

20 Next, the trustee contends that the Motion satisfies the
21 requirements of Rule 23(b)(3); namely, that the questions of law
22 or fact common to class members predominate over any questions
23 affecting only individual members and that a class action is
24 superior to other available methods for fairly and efficiently
25 adjudicating their claims. The Salyer entities do not contest
26 the first of these -- that common questions of law or fact
27 predominate, and the court adopts the trustee's analysis on this
28 issue.

1 The Salyer entities' contention is that the trustee has not
 2 demonstrated that class certification is a preferred method of
 3 adjudicating the claims of the putative class members. First,
 4 they note that the claims bar date in this case has passed. They
 5 argue that although putative class members might file late claims
 6 if class certification is denied, "there is no reason to believe
 7 that such late claims, if any, would embroil the estate in more
 8 controversies than will be generated by the opt out provisions of
 9 the Settlement."¹

10 The Salyer entities argue it is unlikely that parties who
 11 failed to file timely proofs of claim in the first instance would
 12 decide to file late claims if class certification is denied.
 13 Assuming none of these parties filed late claims, the trustee
 14 would have only 11 individual claims to deal with.² Of those 11,
 15 several are for very small amounts, and the trustee would likely
 16 not object to them. Thus, at first glance, it appears that class
 17 certification is not particularly preferable to the ordinary
 18 individual claims procedure.

19 However, although the majority of the putative class members
 20 were listed on the debtor's master address list (from which the
 21 service list for the court's notice of the claims bar date is
 22 derived), many were not, and it is likely many of those did not
 23 receive notice of the case in time to file a proof of claim. At

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 25 1. Objection to Renewed Motion for Certification of Class
 26 Proofs of Claim, filed January 10, 2011 (the "Objection"), 1:21-
 27 23.

28 2. The trustee's reply to the Salyer entities' opposition
 contains as an exhibit a list of the 232 putative class members,
 with a checkmark for those who filed timely proofs of claim --
 there are only 11.

1 least a portion of those would be expected to file late claims in
2 the event class certification is denied. Further, as the trustee
3 points out, even claimants who received timely notice of the case
4 might file late claims, contending they did not file their own
5 claims on a timely basis because they relied on the Class Claims,
6 which were timely filed.

7 Thus, if class certification is denied, the trustee would
8 likely have late claims to resolve or litigate, as well as the
9 original 11, some of which are substantial enough in amount to
10 warrant an objection. On the other hand, if the class is
11 certified, as the trustee points out, putative class members are
12 not likely to opt out because most would recognize that the cost
13 of litigating their individual claims would likely exceed their
14 potential recovery. Further, opt-outs are a possibility in every
15 class action; there is nothing about this case that makes the
16 prospect any more troublesome than in any other. In short, the
17 court agrees with the trustee that class treatment is a superior
18 method to individual adjudication of the claims.

19 Next, the Salyer entities complain that the trustee's
20 proposed class procedures would "require[] a separate claim
21 process to determine the recoveries to be provided to any
22 individual Class member."³ Again, this is a factor in every
23 class action that is settled or adjudicated in favor of class
24 plaintiffs. The trustee's reply satisfies the court that he, or
25 Class Counsel, will be able to propose a reasonable and cost-
26 effective mechanism for determining individual distributions at
27

28 3. Objection, 1:23-2:1.

1 the appropriate time, a mechanism that will be superior to
2 resolving the claims on an individual basis.

3 Third, the Salyer entities refer to Kraft Foods' purported
4 decision to opt out of the putative class. They contend that
5 "[t]he estate, therefore, will be effectively double counting the
6 Kraft claim, i.e. Kraft retains its direct claim and the Class
7 Representatives will receive an allowed claim that presumably was
8 negotiated when it was contemplated that Kraft would remain part
9 of the Class."⁴ They complain that the trustee's proposed
10 compromise of the Class Claims "does not provide a mechanism for
11 a reduction of the allowed claims to be provided to the Class
12 Representatives in the event that members opt out of the Class."

13 First, Kraft conveyed its purported opt-out before any class
14 had been certified; in fact, the putative class has not yet been
15 certified. Second, the court accepts the trustee's response and
16 the representations made at the hearing that he, Class Counsel,
17 and the Class Representatives contemplated the possibility of
18 opt-outs, particularly of large claims, at the time they
19 negotiated the compromise. Third, reducing the Class Claim
20 amounts allowed under the compromise by the amounts of opt-out
21 claims would be unworkable,⁵ and would render the compromise far
22 too uncertain to enable putative class members to make a reasoned
23 decision whether to participate or to opt out.

24 / / /

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26 4. Objection, 2:24-26.

27 5. Would the reduction be based on the face amounts of the
28 claims opting out even if those claims are disputed? Or would
the trustee have to litigate or settle the opt-out claims before
the Class Claims would be reduced?

1 Finally, the Salyer entities contend the compromise, and
2 presumably the class certification, "complicates and leaves
3 unresolved the claims reconciliation process."⁶ They list six
4 questions as examples. The court agrees with the trustee --
5 these questions have no bearing on the issue whether class
6 treatment is the superior method for resolution of these claims.
7 To whatever extent they do pertain, the court is satisfied with
8 the trustee's responses. The trustee proposes to seek court
9 approval of the proposed claims resolution process at the
10 appropriate time; objections may be raised then.

11 Rule 23(b)(3) lists the matters pertinent to the question
12 whether a class action is the superior method for fairly and
13 efficiently adjudicating putative class claims as including:

14 (A) the class members' interests in individually
15 controlling the prosecution or defense of separate
16 actions; (B) the extent and nature of any litigation
17 concerning the controversy already begun by or against
18 class members; (C) the desirability or undesirability
19 of concentrating the litigation of the claims in the
20 particular forum; and (D) the likely difficulties in
21 managing a class action.

22 Rule 23(b)(3).⁷

23 The third factor -- concentrating litigation of the claims
24 in a particular forum -- does not apply in this case. The fourth
25 -- difficulties in managing a class action -- is neutral here
26 because of the compromise of the Class Claims. As for the first
27 and second factors, the court considers that the Class
28 Representatives entered into the compromise on the assumption

29 6. Objection, 3:1-2.

30 7. The Salyer entities have not addressed any of these
31 issues.

1 that the class would be certified, that the trustee served notice
2 of the Motion on all known putative class members, and that none
3 has opposed the Motion. None of the class members has asserted
4 that its interests in individually controlling the prosecution of
5 its claim should defeat class certification. Finally,
6 certification of the class in this case, for purposes of
7 approving the compromise of the class members' claims against the
8 estate, will have no negative effect on the litigation already
9 begun by the class members -- the district court actions.

III. CONCLUSION

11 For these reasons, and because a cost-benefit analysis
12 strongly supports granting the Motion, and finding the Salyer
13 entities' arguments to be unpersuasive, the court concludes that
14 class certification is the superior method of fairly and
15 efficiently adjudicating the Class Claims. Accordingly, the
16 court will grant the Motion, certify the proofs of claim filed by
17 the Class Representatives as class claims for purposes of the
18 compromise, define the claimants who will be entitled to
19 participate as members of the class, certify the Class
20 Representatives as the representatives of the class for purposes
21 of the allowance and treatment of their claims in this case, and
22 appoint the law firms of Quinn Emanuel Urquhart & Sullivan LLP
23 and Hausfeld LLP as counsel to the class. Finally, the court
24 will approve the trustee's proposal for subsequent court
25 consideration of notice to the class members, as set forth in his
26 memorandum of points and authorities.

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1 The trustee may submit an appropriate order.

2 Dated: Jan. 27, 2011

Robert Bardwil

3 ROBERT S. BARDWIL
4 United States Bankruptcy Judge

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CERTIFICATE OF MAILING

I, Andrea Lovgren, in the performance of my duties as Deputy Clerk to the Honorable Robert S. Bardwil, mailed by ordinary mail a true copy of the attached document to each of the parties listed below:

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25 | DATE: January 27, 2011

Deputy Clerk